

U. S.  
1944  
CLERK

# Supreme Court of the United States

OCTOBER TERM, 1943

No. 109

CITY OF YONKERS and JOHN W. TOOLEY, JR., as President  
of Committee of Yonkers Commuters, etc.,

Appellants,

THE UNITED STATES OF AMERICA, INTER-STATE COMMERCE  
COMMISSION and THE NEW YORK CENTRAL RAILROAD  
COMPANY.

## MOTION TO ENLARGE TIME FOR ISSUANCE OF MANDATE.

THOMAS P. HEALY,  
HAROLD H. McLEAN,  
Attorneys for The New York  
Central Railroad Company.

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## MOTION TO ENLARGE TIME FOR ISSUANCE OF MANDATE.

Now comes The New York Central Railroad Company, appellee in the above entitled cause, and respectfully moves that the time for the issuance of the mandate of the Court in this cause be enlarged until March 1, 1944, for the following reasons:

1. Your movant on August 20, 1942, filed its application with the Interstate Commerce Commission under Section 1(18) of the Interstate Commerce Act seeking authority to abandon its Yonkers Branch (R. 10-30). After full hearing and argument Division 4 of the Commission issued its order certifying that the present and future public convenience and necessity permitted the abandonment (R. 78-79). This order, dated March 20, 1943, provided that it should become

effective within 40 days thereafter, or on April 29, 1943. The effective date of the order was subsequently postponed until May 29, 1943, pending consideration and ultimate denial by the full Commission of petitions for reconsideration (R. 110). Suit to enjoin the order was instituted on May 21, 1943 (R. 1). At the request of the District Court the effective date of the order was further postponed until June 12, 1943.

2. On June 10, 1943, the specially constituted District Court rendered its opinion and judgment finding the Commission's order to be valid (R. 380-5). The next day plaintiffs petitioned the District Court to stay the Commission's order pending appeal (R. 385-8). The District Court granted a temporary stay only until application could be made to this Court or a Justice thereof, but in no event longer than June 19, 1943 (R. 388). On June 16, 1943, application for a stay was presented to and denied by Mr. Justice Jackson after informal hearing, but Mr. Justice Jackson kept the application open until it could be considered by the Court. On June 21, 1943, the Court denied the stay and noted probable jurisdiction. The order of the Commission therefore became effective June 21, 1943.

3. Under the certificate of the Commission, found valid by the District Court and not stayed either by that court or by this Court, your movant, in order to avoid further losses from the operation of the branch and in order to utilize elsewhere on its system the equipment and manpower used in operating the branch, discontinued service over it on June 30, 1943. Since that time movant has removed some of the electric installations to avoid theft, while other facilities have deteriorated and the stations have been boarded up. The tracks remain intact. The employees used to maintain and operate said branch have been reassigned to other duties and the eleven multiple unit cars formerly used on the line have been placed in other service.

in the New York district, thereby bringing about the release of an equivalent number of standard coaches, formerly operating on movant's Harlem Division, for use elsewhere on movant's system where they were and are badly needed for the transportation of the large civil and military traffic resulting from the war.

4. On January 3, 1944, this Court rendered its opinion finding the Commission's order to be invalid solely on the ground of the inadequacy of the Commission's findings in respect of the status of the branch under Section 1(22) of the Interstate Commerce Act.

5. On January 12, 1944, the Commission on its own motion reopened the proceeding for rehearing and reconsideration, and assigned the proceeding for further hearing in the City of Yonkers on January 24, 1944, with leave to the parties to submit Briefs, provided they are filed on or before 10 days after conclusion of the hearing, with no reply briefs. Copy of the order is appended hereto as Exhibit A. It seems evident, in view of the early date assigned by the Commission for the rehearing and its announcement in respect to the filing of briefs, that the Commission contemplates rendering an early decision in the matter.

6. Under Rule 34 of this Court the mandate will issue as of course after the expiration of 25 days from the date the judgment was entered, or on January 28, 1944, unless the time is shortened or enlarged by order of the Court. If the mandate is issued on January 28, 1944, and the court below promptly issues its injunction setting aside the present certificate of the Commission, your movant will be compelled to restore service on the branch, with the probability that such restored service will be temporary only. Under these circumstances it is submitted that the present status should be maintained until the Commission has had an

opportunity to act. If the Commission finds upon the enlarged record containing up to date evidence that the abandonment would not be consistent with public convenience and necessity, service can then be restored on a permanent basis. A temporary restoration of service would not be in the public interest.

7. It is, therefore, in the public interest that the mandate of this Court be stayed until the Commission has had an opportunity to act, to the end that there shall be conserved the manpower and equipment that would be used by your movant in temporarily restoring service on the Yonkers Branch, since there exists on your movant's railroad, now largely engaged in war service, a severe shortage of both manpower and equipment, particularly standard coaches, as is more particularly set forth in the affidavit of Raymond D. Starbuck, Executive Vice President of your movant, hereto appended as Exhibit B.

WHEREFORE, The New York Central Railroad Company prays that the time for the issuance of the mandate of this Court be enlarged until March 1, 1944.

Respectfully submitted,

THE NEW YORK CENTRAL RAILROAD COMPANY,

By

THOMAS P. HEALY,  
HAROLD H. McLEAN,  
Its Attorneys.

Dated, January 18, 1944.

**Exhibit A.****ORDER**

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 12th day of January, A. D., 1944.

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Finance Docket No. 13914

NEW YORK CENTRAL RAILROAD COMPANY  
ABANDONMENT

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Upon further consideration of the record in the above-entitled proceeding, and

*It appearing*, That the Supreme Court of the United States on January 3, 1944, in its opinion in *City of Yonkers et al. v. United States of America et al.*, No. 109, October Term, 1943, held the certificate of public convenience and necessity issued herein on March 20, 1943, to be invalid because of the absence of requisite jurisdictional findings,

*It is ordered*, That, upon our own motion, said proceeding be, and it is hereby, reopened for rehearing, and reconsideration: ✓

*It is further ordered*, That said proceeding be, and it is hereby, assigned for further hearing before Examiner W. J. Schutrumpf on the 24th day of January, 1944, at 9:30 o'clock A. M., at City Hall, Yonkers, N. Y.:

*And it is further ordered*, That the parties may submit briefs provided they are filed on or before ten days after the conclusion of the hearing, but no reply briefs may be filed.

By the Commission.

W. P. BARTEL,  
Secretary.

(SEAL)

**Exhibit B.****AFFIDAVIT**

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } ss.:

RAYMOND D. STARBUCK, being duly sworn, deposes and says that he is Executive Vice President of The New York Central Railroad Company, and has supervision and jurisdiction over and is familiar with its passenger train and other operations and is informed as to its position in respect to manpower. Deponent further says that:

1. Due to the war emergency, the New York Central, though experiencing a rising tide of civil and military traffic, is, in common with other railroads, encountering a shortage of manpower, which, as of December 30, 1943, totaled 19,700 persons, divided as between 11,488 shortages in personnel and 8,212 absentees on account of illness. Shortages exist in all branches of the service, including the train and engine forces available for operating trains in the New York electric zone.

2. Due to the war emergency the New York Central, in common with other railroads, is encountering a shortage of equipment, particularly standard passenger coaches, which are in great demand for transporting civil and military traffic long distances in through movements over the Central and other railroads. The needs of the military for coaches for special movements vary between 50 and 250 per day, and when the demand is heavy coaches must be taken from regular trains and passengers on those trains deprived of seats. Many of the Central's passenger trains frequently carry standing passengers and occasional trains are so crowded that patrons are left on station platforms.

3. The restoration of service on the Yonkers Branch will take eleven multiple unit cars from the pool of cars already fully used to provide electric service in the New York suburban area. In order to replace these eleven multiple unit cars, an equivalent number of standard coaches will have to be withdrawn from the inter-city service and used, as they were before service was abandoned on the Yonkers Branch, on certain regularly scheduled and fully loaded trains operating on the Harlem Division in the New York suburban area.

4. Since the Yonkers Branch service is, to a considerable extent, a duplicate service for passengers now boarding trains at Ludlow station on the Hudson Division, and, as found by the Interstate Commerce Commission, there is suitable alternate service available in the City of Yonkers, it would, in affiant's judgment, in view of the circumstances above set forth, not be in the interest of efficient management and service to the largest number of people to restore service on the Yonkers Branch pending reconsideration by the Interstate Commerce Commission of the abandonment proceeding now before it.

RAYMOND D. STARBUCK.

Sworn to before me this  
18th day of January, 1944.

G. HARRY OETGEN,

Notary Public, Westchester Co.

Certificate filed in New York Co.

N. Y. Co. Clk's. No. 266, Reg. No. 4-O-154

Commission Expires March 30, 1944.